

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: PIENIMAKI et al.
Title: FORCED ENCRYPTION FOR
WIRELESS LOCAL AREA
NETWORKS
Appl. No.: 10/679,486
Filing Date: 10/7/2003
Examiner: LASHLEY, LAUREL L.
Art Unit: 2132
Confirmation Number: 4042

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with the New **Pre-Appeal Brief Conference Pilot Program**, announced July 11, 2005, this Pre-Appeal Brief Request is being filed together with a Notice of Appeal.

REMARKS

Claims 1, 2 and 5-12 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. 2004/0203783 to Wu et al. (hereinafter “Wu”) in view of U.S. Patent No. 6,081,900 to Subramaniam et al. (hereinafter “Subramaniam”). Applicant respectfully traverses this rejection for at least the following reasons.

In response to the Final Office Action dated July 9, 2007, Applicant explained that embodiments of the present invention relate to wireless connectivity arrangements in which applications running via, for example, Internet access are forced to an encrypting security

service port. An access control point initiates authentication, authorization and accounting (AAA) for a terminal and forces applications to switch their traffic to an encrypting security service port. Thus, the AAA procedure and enforcement to switch to an encrypting security service port are effected by the same entity (i.e., the access control point) which also provides an Internet access gateway functionality. This enables a simple solution to encrypt all traffic of wireless local area networks which access the applications via the Internet without the need to implement new software and/or new hardware at the end user's side. Moreover, it can be implemented that encryption is only forced for correctly authenticated end users. Accordingly, independent claim 1 recites "enforcing the application to switch its traffic to an encrypting security port by the access control point." (emphasis added). Independent claims 7 and 10 each recite a similar feature.

Applicant submitted that the pending claims are patentable over Wu and Subramaniam. Specifically, the prior art references fail to teach or suggest, either individually or in combination, at least the above-noted feature of the pending claims. Further, the Examiner has failed to identify any clear suggestion or motivation (in any of the cited references) to combine the two references.

First, neither Wu nor Subramaniam teaches or suggests the above-noted feature of the pending claims. As acknowledged by the Examiner, Wu "fails to disclose enforcing the applications to switch their traffic to an encrypting security service port by the access control point." Office Action dated July 9, 2007, Page 5. The Office Action relies on Subramaniam as disclosing this feature. Applicant respectfully disagrees with this interpretation of the disclosure of Subramaniam.

Subramaniam discloses the use of a server to redirect an access request to a border server. However, the redirection server of Subramaniam is not an access control point, as recited in the pending claims. In this regard, an access control point, as described in the specification of the present application, controls access to a network and initiates authentication, authorization and accounting for a terminal. There is no disclosure in Subramaniam of either the redirecting server or any other component as an access control point. Subramaniam merely discloses the redirection of access requests to force encryption

of traffic to some server, which server is not disclosed as providing access to a network as an access control point. Thus, Subramaniam fails to teach or suggest “enforcing the application to switch its traffic to an encrypting security port by the access control point,” as recited in the pending claims.

In order to establish a prima facie case of obviousness, “... the prior art reference (or references when combined) must teach or suggest all the claim limitations.” See M.P.E.P. § 2142, ¶1 (emphasis added). Since Wu and Subramaniam fail to teach or suggest at least the above-noted feature of the pending claims, the Office Action fails to establish a prima facie case of obviousness.

Second, Applicant submitted that the Examiner has failed to identify any clear suggestion or motivation for combining the teachings of Wu and Subramaniam. As noted recently by the U.S. Supreme Court, when looking at the teachings of multiple references, it is to be determined:

... whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis should be made explicit.

KSR Int’l Co. v. Teleflex, Inc., No. 04-1350 (U.S. Apr. 30, 2007).

In the present case, the Examiner identifies no clear suggestion or motivation (in either Wu or Subramaniam) to combine the two references to achieve the claimed invention. Specifically, the Examiner fails to provide any explicit analysis to support the “apparent reason to combine” the references. Rather, the Examiner merely makes the unsupported assertion that it “would have been obvious to one of the ordinary skill in the art ... to combine the teaching of Wu and teaching of Subramaniam” Applicant respectfully submits that the Examiner’s assertion is without merit.

It is clearly only with improper hindsight, and only with benefit of Applicant’s disclosure, that there is any motivation to undertake the required modification of each of the prior art references to arrive at the present invention. Absent Appellant’s disclosure, there is no motivation to combine the asserted references, and even if there was such motivation,

there is simply no guidance as to which features one should pick and choose from each prior art reference in order to arrive at the present invention. The cited disclosures are sufficiently disparate to require more than ordinary skill to combine without the benefit of hindsight.

Thus, Applicant argued that claims 1, 7 and 10 are patentable. Claims 2, 5 and 6 depend directly from allowable claim 1 and are, therefore, patentable for at least that reason, as well as for additional patentable features when those claims are considered as a whole. Similarly, claim 8 and 9 depend directly from allowable claim 7, and claims 11 and 12 depend directly from allowable claim 10. Therefore, claims 8, 9, 11 and 12 are patentable for at least that reason, as well as for additional patentable features when those claims are considered as a whole.

In the Advisory Action dated September 20, 2007, the Examiner sets forth his observation in reply to Applicant's arguments. However, it seems the core point of Applicant's arguments wasn't fully appreciated.

The Examiner's observations appear to claim that the Wu reference discloses an access control point substantially in accordance with the disclosure of the subject application and that the Subramaniam reference discloses enforcement for an application to switch the traffic to an encrypting security service port. However, it is no access control point in the Subramaniam reference which performs this enforcement. One of Applicant's arguments is that the combining of Wu and Subramaniam seems arbitrary and that combining Wu and Subramaniam would suggest that it is the access control point of Wu which would perform enforcement. In establishing an inter-network communication, quite a number of entities such as controlling nodes/devices would be involved which would come into question for performing such an enforcement.

Selecting the access control point disclosed by Wu for performing the enforcement disclosed by Subramaniam, if that were even possible, appears to be arbitrary and motivated from knowledge of the present invention in hindsight without pointing out motivation of the skilled perform for such a selection. Moreover, a particular effect achieved by the presently claimed invention does not seem to be recognized among the cited references. Hence, relying on this effect as the motivation for the skilled person to combine also suffers from

hindsight. That is, it appears that the particular effect achieved by having the access control point perform the enforcement is that the access control point initiates the authentication, authorization, and accounting procedure and thus “knows” the permission of a user terminal for accessing a particular service/application, which then is a suitable moment for starting the encryption which thus is then enforced by the access control point. As such, Applicant respectfully requests reconsideration and withdrawal of the outstanding office action in this case.

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance.

Respectfully submitted,

Date: November 9, 2007

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 061715-0391	
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	First Named Inventor Sami Pienimaki		
	Art Unit 2132	Examiner LASHLEY, LAUREL L.	
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>37,268</u> <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____ </div> <div style="width: 45%; text-align: center;"> <u>/G. Peter Albert Jr./</u> Signature <u>G. Peter Albert Jr.</u> Typed or Printed Name <u>(858) 847-6735</u> Telephone Number <u>November 9, 2007</u> Date </div> </div> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <p><input checked="" type="checkbox"/> *Total of 1 forms are submitted.</p>			

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